

STATEMENT

OF

RICHARD SERINO
DEPUTY ADMINISTRATOR

FEDERAL EMERGENCY MANAGEMENT AGENCY
U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE
THE

SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
U.S. SENATE
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**“OVERSIGHT OF THE DEFENSE PRODUCTION ACT: ISSUES AND
OPPORTUNITIES FOR REAUTHORIZATION”**

Submitted
By

Federal Emergency Management Agency
500 C Street, S.W.
Washington, D.C. 20472

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Introduction

Good morning, Mr. Chairman and Members of the Committee, I am Richard Serino, Deputy Administrator of the Federal Emergency Management Agency (FEMA). On behalf of FEMA and the Department of Homeland Security (DHS), I appreciate this opportunity to appear before you to support a 5-year reauthorization of the nonpermanent provisions of the Defense Production Act (DPA) and to discuss the importance of the DPA to support our national defense, including disaster preparedness and response, protection and restoration of critical infrastructure operations, and homeland security capabilities.

The DPA is the primary source of Presidential authorities to expedite the supply of materials and services needed for both military and civil emergency preparedness and response. While a few provisions of the DPA are permanent, expiration of the nonpermanent authorities would undermine the ability to prepare for and respond to natural disasters and other threats, such as an earthquake, a hurricane or an incident involving a weapon of mass destruction.

Use of Title I Priorities Authority

The use of DPA authorities has evolved over time. Title I of the DPA authorizes the priority treatment of contracts and orders. While the priorities authority is used primarily to support Department of Defense programs, it has gained increased importance for homeland security purposes, particularly since the Act was amended in 2003 and 2009. As with rated orders in support of military programs, rated orders for homeland security programs are used to ensure on-time performance when delays could place lives and property at greater risk.

Under Executive Order 13603, which delegates presidential DPA authorities, six Federal agencies have jurisdiction over various types of resources. The priorities authority most often has been used for resources falling under the jurisdiction of the Department of Commerce (DOC), which include most manufactured goods and services. DOC has delegated to the Department of Homeland Security (DHS) its authority to place priority-rated orders for its own programs, for the purposes of emergency preparedness and response activities under the Stafford Act, critical infrastructure protection and restoration efforts, and measures to prevent, mitigate, and recover from acts of terrorism. DOC also has delegated its authority to the Department of Defense, and to other entities as needed.

It is important to note that the priorities authority is used only in support of eligible programs in circumstances when a procurement delay would prevent timely completion of a critical program or when a procurement problem occurs or is anticipated. Eligibility for application of the priorities authority is determined against a standard of “necessary or appropriate to promote the national defense,” in accordance with section 101 of the Act. The Secretary of Homeland Security is delegated the responsibility for making this determination for civilian national defense programs (not pertaining to the military, space, or energy). FEMA makes these determinations on behalf of the Secretary.

By law, the priorities authority may be utilized to support a range of activities in support of the national defense, to include: programs for military and energy production and construction;

military or critical infrastructure assistance to foreign nations; homeland security activities to prevent, mitigate damage from, or recover from terrorist attacks; and emergency preparedness activities under Title VI of the Stafford Act. FEMA has made determinations that programs are necessary or appropriate to promote the national defense across a range of civilian uses.

Priorities authority may be used to support disaster preparedness and response activities under Title VI of the Stafford Act. For example, after Hurricane Sandy, FEMA used priority ratings to place contracts for telephonic interpreter services to enable communications with the diverse population impacted by this disaster. After Hurricane Katrina, priorities authority was used to speed delivery of equipment needed to restore rail service in the Gulf Coast region. In addition, the U.S. Army Corps of Engineers was authorized to place priority ratings in contracts and orders for its program to repair and restore floodwalls and levees after Hurricane Katrina. In this case, the priorities authority was used to help prevent delays to improvements to the greater New Orleans Hurricane and Storm Damage Risk Reduction System.

Similarly, FEMA has used the priorities authority to support timely repair and modernization of critical equipment that supports emergency preparedness and response capabilities. For example, priorities authority was used to support timely modernization of the FEMA National Radio System and to support the computer network and other operations in the National Response Coordination Center.

Priority ratings can also be used in support of other homeland security programs. For example, FEMA determined that U.S. Customs and Border Protection (CBP) can use priority-rated contracts to support timely maintenance and upgrade of its P-3 Orion aircraft fleet. These planes are used primarily in the interdiction of drugs and other contraband destined for the United States, but are also used to support anti-terrorism and border protection missions. In another case, the priorities authority was used to ensure timely completion of perimeter security measures at the Boston airport and its seaports. The use of priority-rated contracts was needed to ensure timely delivery of high-tech camera equipment needed for these projects.

Within the past year, FEMA has also determined that various emergency preparedness and continuity of operations activities of the Architect of the Capitol (AOC) are in support of the national defense. This includes such AOC activities as providing and maintaining physical security and surveillance; electronic surveillance, detection and warning systems; fire alarm and suppression systems; life safety equipment; hazardous material protective equipment; hazardous material response equipment; and shelter-in-place equipment. It also includes efforts to establish and maintain redundancy for critical information and communications systems.

In addition to the U.S. Army Corps of Engineers and the Architect of the Capitol, several other Government agencies have been authorized by DOC to use priority-rated contracts in recent years to support specific homeland security activities after FEMA has made a determination that the activity was in support of the national defense.

For example, the National Nuclear Security Administration in the Department of Energy has used priorities authority to support several of its programs. It was used in support of the Second Line of Defense Program, the purpose of which is to strengthen the capability of international

partners to deter, detect and interdict illicit trafficking in nuclear and other radioactive materials across international borders and through the global maritime shipping system. It was also used in support of the Nuclear Counterterrorism Incident Response program, which promotes first responder and law enforcement capabilities to respond to and mitigate nuclear and radiological incidents in the United States and worldwide.

In 2009, FEMA determined that the Department of Health and Human Services (HHS) program to combat the H1N1 influenza was eligible for priorities support. This program involved procurement of vaccines and anti-viral drugs and the development, manufacture, and supply of other medical countermeasures approved, licensed, or cleared by the Food and Drug Administration, such as biologics, equipment and devices.

Based upon FEMA determinations of eligibility, priorities authority is also being used in support of the State Department's Domestic Facilities and Personnel Protection Program, which provides for the security of domestic State Department facilities, U.S. Government personnel located in those facilities and foreign dignitaries visiting the United States.

Use of Title VII Authorities

Title VII contains a number of authorities – some permanent and some that will terminate in September 2014—if not reauthorized. One permanent section of the law—section 708—authorizes establishment of voluntary agreements. The purpose of a voluntary agreement is to allow cooperation among business competitors to expedite or expand the supply of critical materials or services by planning and coordinating actions in support of the national defense including Government emergency preparedness and response activities. Participants in a voluntary agreement are granted relief from antitrust laws under the provisions of section 708.

Another section of Title VII—section 722 of the DPA—establishes the Defense Production Act Committee to advise the President on the effective use of DPA authority. Section 722 provides that the Committee membership shall include the head of each Federal agency to which the President has delegated DPA authority. The Committee is chaired on an annual rotating basis by the Departments of Homeland Security and Defense. The Committee has established several working groups to study DPA and defense industrial base issues.

Reauthorization of Expiring Provisions

Along with other responsibilities to coordinate federal emergency preparedness and response activities, FEMA provides government-wide coordination and guidance for use of DPA authorities on behalf of the Secretary of Homeland Security, pursuant to Executive Order 13603. FEMA works with all relevant Federal agencies to ensure effective use and proper implementation of the DPA, to include awareness of the ability to incorporate the DPA in planning for emergencies.

Without renewal of expiring provisions of the DPA, a critical statutory authority to ensure timely procurement of materials and services to protect and restore critical infrastructure operations – whether they are key transportation capabilities, floodwalls, or levees – would be lost. Without

the DPA, DHS and other Federal agencies would have no authority to prioritize contracts for resources needed for emergency preparedness, for critical infrastructure restoration or protection, or for lessening the risks associated with a terrorist attack. In closing, I urge that Congress reauthorize the DPA authorities that remain critical to our national defense.

Thank you, Chairman Johnson, for the opportunity to appear before you today, and I would be pleased to answer any questions you or other members of the Committee may have.